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OFFICE OF PETITIONS

In re Application of
Thiedig, et al. :
Application No. 09/931,606 :
Filed: 16 August, 2001 :
Attorney Docket No: 64251-030 :
:

ON PETITION

This is a decision on the petition under 37 C.F.R. §1.55(c), filed 28 March, 2004, for acceptance of an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for benefit, as the continuation of foreign application PCT/DE00/00428, of the filing date of foreign Applications identified as “PCT/DE00/00428, 199 06 021.5, filed 15 February, 2000,” and “PCT/DE00/00428, 199 06 021.5, filed 15 February, 1999” (sic).

The petition is **DISMISSED**.

A petition under 37 C.F.R. §1.55(c) to accept an unintentionally delayed claim for priority requires:

- The nonprovisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;
- The claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date and be

included either in an oath or declaration (37 C.F.R. §1.63(c)(2)) or in an Application Data Sheet (ADS) (37 C.F.R. §1.76(b)(6));

- The surcharge as set forth in 37 C.F.R. §1.17(t);
- A statement that the entire delay between the date the claim was due under 37 C.F.R. §1.55(a)(1) and the date the claim was filed was unintentional. (The Commissioner may require additional information where there is a question whether the delay was unintentional); and
- The above-identified nonprovisional application must be filed within 12 months of the filing date of the foreign application.

The instant petition fails to comply with the second and fifth items, above.

Specifically:

- Petitioner sets forth conflicting information as to the applications—i.e., identifying the claims two applications with the same application number but two different filing dates; and
- Petitioner states at the last paragraph of the petition that he “respectfully petitions for leave to claim priority to August 16, 1999;” however, the data set forth in the ADS specifies dates in February of 2000 and February of 1999—not August of 1999.

In this regard, a review of the file record fails to disclose at this writing that the priority information was included properly in an oath or declaration or in an Application Data Sheet in accordance with 37 C.F.R. §1.76(b)(6). Unless provided in an application data sheet, 37 C.F.R. §1.63(c)(2) requires that the oath or declaration must identify the foreign application for patent or inventor’s certificate for which priority is claimed under 37 C.F.R. §1.55, and any foreign applications having a filing date before that of the application on which priority is claimed, by specifying the application number, country, day, month, and year of its filing. *Note* MPEP §201.14, page 200-77 (Rev. 2, May 2004), last paragraph, second column.

In view of the above, compliance with 37 C.F.R. §1.63(c)(2) or 37 C.F.R. §1.76(b)(6) must be satisfied if applicant desires to claim priority to the foreign applications noted in the ADS. Any future petition should include a cover letter and be entitled A Renewed Petition under 37 C.F.R. §1.55(c).

Application No. 09/931,606

Further correspondence with respect to this matter should be addressed as follows:

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